

AN ACT

relating to the registration and regulation of appraisal management companies; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 1103, Occupations Code, is amended by adding Section 1103.157 to read as follows:

Sec. 1103.157. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to advise the board and make recommendations on matters related to the regulation of appraisal management companies under Chapter 1104.

(b) The advisory committee consists of the assistant presiding officer of the board and two persons appointed by the governor as follows:

(1) a controlling person of an appraisal management company registered under Chapter 1104; and

(2) a public member with recognized business ability.

(c) The assistant presiding officer of the board shall serve as the presiding officer of the advisory committee.

(d) The members of the advisory committee appointed by the governor serve staggered two-year terms, with the terms of the appraisal management company member and the public member expiring on January 31 of alternating years.

SECTION 2. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1104 to read as follows:

1 CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 1104.001. SHORT TITLE. This chapter may be cited as
4 the Texas Appraisal Management Company Registration and Regulation
5 Act.

6 Sec. 1104.002. PURPOSE. The purpose of this chapter is to
7 establish and enforce standards related to appraisal management
8 services for appraisal reports on residential properties located in
9 this state with fewer than five units.

10 Sec. 1104.003. DEFINITIONS. (a) The definitions in
11 Section 1103.003 apply to this chapter.

12 (b) In this chapter:

13 (1) "Appraisal management company" means, in
14 connection with valuing properties collateralizing mortgage loans
15 or mortgages incorporated in a securitization, an external third
16 party authorized either by a creditor of a consumer credit
17 transaction secured by a consumer's principal dwelling or by an
18 underwriter of or other principal in the secondary mortgage markets
19 that directly or indirectly performs appraisal management
20 services.

21 (2) "Appraisal management service" means to directly
22 or indirectly perform any of the following acts:

- 23 (A) administer an appraisal panel;
24 (B) recruit, retain, or select an appraiser;
25 (C) contract with an appraiser to perform an
26 appraisal assignment;
27 (D) provide a completed appraisal performed by an

1 appraiser to one or more clients; or

2 (E) manage the process of having an appraisal
3 performed, including:

4 (i) receiving and assigning appraisal
5 orders and reports;

6 (ii) tracking and determining the status of
7 orders for appraisals;

8 (iii) conducting quality control of a
9 completed appraisal before delivery of the appraisal to the person
10 who ordered the appraisal;

11 (iv) collecting fees from creditors and
12 underwriters for services provided; or

13 (v) reimbursing appraisers for services
14 performed.

15 (3) "Appraisal panel" means a pool of licensed or
16 certified appraisers who perform appraisals as independent
17 contractors for an appraisal management company.

18 (4) "Appraisal review" means the act or process of
19 developing and communicating an opinion about the quality of
20 another appraiser's work that was performed as part of an appraisal
21 assignment. The term does not include an examination of an
22 appraisal for grammatical, typographical, mathematical, or other
23 similar administrative errors that do not involve the appraiser's
24 professional judgment, including compliance with the elements of
25 the client's statement of work.

26 (5) "Appraiser" means a person licensed or certified
27 under Chapter 1103.

1 (6) "Controlling person" means:

2 (A) an owner, officer, or director of an
3 appraisal management company;

4 (B) an individual employed, appointed, or
5 authorized by an appraisal management company that has the
6 authority to enter into a contractual relationship with other
7 persons for the performance of appraisal management services and
8 the authority to enter into agreements with appraisers for the
9 performance of appraisals; or

10 (C) an individual who possesses, directly or
11 indirectly, the power to direct or cause the direction of the
12 management or policies of an appraisal management company.

13 (7) "Financial institution" means:

14 (A) a bank, savings bank, or savings and loan
15 association or a subsidiary or affiliate of a bank, savings bank, or
16 savings and loan association;

17 (B) a state or federal credit union or a
18 subsidiary, affiliate, or credit union service organization of a
19 state or federal credit union;

20 (C) an insurance company licensed or authorized
21 to do business in this state under the Insurance Code;

22 (D) a mortgage banker registered under Chapter
23 157, Finance Code;

24 (E) a person licensed under Chapter 156, Finance
25 Code;

26 (F) a lender licensed under Chapter 342, Finance
27 Code;

1 (G) a farm credit system institution; or

2 (H) a political subdivision of this state
3 conducting an affordable home ownership program.

4 (8) "Uniform Standards of Professional Appraisal
5 Practice" means the Uniform Standards of Professional Appraisal
6 Practice adopted by the Appraisal Standards Board of the Appraisal
7 Foundation.

8 Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply
9 to:

10 (1) a person who exclusively employs appraisers on an
11 employer and employee basis for the performance of appraisals;

12 (2) a person acting as an appraisal firm as defined by
13 board rule that at all times during a calendar year employs on an
14 exclusive basis as independent contractors not more than 15
15 appraisers for the performance of appraisals;

16 (3) a financial institution, including a department or
17 unit within the institution, that is regulated by an agency of this
18 state or the United States government;

19 (4) subject to Subsection (b), a person who enters
20 into an agreement with an appraiser for the performance of an
21 appraisal that on completion results in a report signed by both the
22 appraiser who completed the appraisal and the appraiser who
23 requested completion of the appraisal;

24 (5) an appraisal management company with an appraisal
25 panel of not more than 15 appraisers at all times during a calendar
26 year; or

27 (6) an appraisal management company that is a

1 subsidiary owned and controlled by a financial institution that is
2 subject to appraisal independence standards at least as stringent
3 as those under Section 1104.203 or the Truth in Lending Act (15
4 U.S.C. Section 1601 et seq.) through regulation by an agency of this
5 state or the United States government.

6 (b) An appraisal management company may not require an
7 employee of the appraisal management company who is an appraiser to
8 sign an appraisal that is completed by another appraiser who
9 contracts with the appraisal management company in order to avoid
10 the requirements of this chapter.

11 [Sections 1104.005-1104.050 reserved for expansion]

12 SUBCHAPTER B. BOARD POWERS AND DUTIES

13 Sec. 1104.051. RULES. The board may adopt rules necessary
14 to administer the provisions of this chapter.

15 Sec. 1104.052. FEES. (a) Subject to Subsection (b), the
16 board by rule shall establish application, renewal, and other fees
17 in amounts so that the sum of the fees paid by all appraisal
18 management companies seeking registration under this chapter is
19 sufficient for the administration of this chapter.

20 (b) The board shall collect from each appraisal management
21 company registered under this chapter the national registry fee
22 required by the appraisal subcommittee for each person who is on the
23 appraisal panel of the company and licensed or certified as an
24 appraiser in this state. The board shall deposit the registry fees
25 to the credit of the appraiser registry account in the general
26 revenue fund.

27 (c) The fees collected under Subsection (b) shall be sent to

1 the appraisal subcommittee regularly as required by federal law.

2 [Sections 1104.053-1104.100 reserved for expansion]

3 SUBCHAPTER C. REGISTRATION REQUIREMENTS

4 Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is
5 registered under this chapter, a person may not:

6 (1) act or attempt to act as an appraisal management
7 company;

8 (2) provide or attempt to provide appraisal management
9 services; or

10 (3) advertise or represent or attempt to advertise or
11 represent the person as an appraisal management company.

12 Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP.

13 (a) A person who has had a license or certificate to act as an
14 appraiser denied, revoked, or surrendered in lieu of revocation in
15 any state may not own in any manner more than one percent of an
16 appraisal management company registered or applying for
17 registration under this chapter unless the person has subsequently
18 had a license or certificate to act as an appraiser granted or
19 reinstated.

20 (b) An entity more than 10 percent of which is owned by a
21 person who has had a license or certificate to act as an appraiser
22 denied, revoked, or surrendered in lieu of revocation in any state
23 may not own more than 10 percent of an appraisal management company
24 registered or applying for registration under this chapter unless
25 the person has subsequently had a license or certificate to act as
26 an appraiser granted or reinstated.

27 (c) A person owning more than 10 percent of an appraisal

1 management company in this state must:

2 (1) be of good moral character, as determined by the
3 board; and

4 (2) submit to a background investigation, as
5 determined by the board.

6 (d) An appraisal management company applying for
7 registration under this chapter shall certify to the board that:

8 (1) it has reviewed each entity that owns more than 10
9 percent of the company; and

10 (2) no entity reviewed under Subdivision (1) is more
11 than 10 percent owned by a person who has had a license or
12 certificate to act as an appraiser denied, revoked, or surrendered
13 in lieu of revocation and who has not subsequently had a license or
14 certificate to act as an appraiser granted or reinstated.

15 Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL.

16 (a) An applicant for registration or registration renewal under
17 this chapter must submit:

18 (1) an application on a form approved by the board; and

19 (2) the application or renewal fee established under
20 Section 1104.052(a).

21 (b) The application must contain:

22 (1) the name, business address, and telephone contact
23 information of the entity seeking registration;

24 (2) if the entity is not a corporation domiciled in
25 this state, the name and contact information for the company's
26 agent for service of process in this state;

27 (3) the name, address, and contact information for any

1 individual or any corporation, partnership, or other business
2 entity that owns more than 10 percent of the appraisal management
3 company;

4 (4) the name, address, and contact information for at
5 least one controlling person;

6 (5) the designation of a primary contact under Section
7 1104.104;

8 (6) the name and contact information of at least one
9 appraiser designated by the company to respond to and communicate
10 with appraisers on the company's appraisal panel regarding
11 appraisal assignments;

12 (7) a certification that the entity has a system in
13 place to ensure compliance with Subchapter D and Section 129E of the
14 Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

15 (8) a written irrevocable consent to service of
16 process; and

17 (9) any other information required by the board to
18 approve the application.

19 (c) The board shall adopt rules regarding the renewal of a
20 registration under this chapter.

21 Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An
22 appraisal management company applying for registration under this
23 chapter shall designate one controlling person as the primary
24 contact for all communication between the board and the company.

25 (b) The controlling person designated under Subsection (a):

26 (1) must:

27 (A) be certified as an appraiser in at least one

1 state at all times during the designation; or

2 (B) have completed:

3 (i) the 15-hour national Uniform Standards
4 of Professional Appraisal Practice course; and

5 (ii) the seven-hour national Uniform
6 Standards of Professional Appraisal Practice update course not more
7 than two years before the renewal of the appraisal management
8 company's registration;

9 (2) may not have had a license or certificate to act as
10 an appraiser denied, revoked, or surrendered in lieu of revocation
11 in any state unless the person has subsequently had a license or
12 certificate to act as an appraiser granted or reinstated;

13 (3) must be of good moral character, as determined by
14 the board; and

15 (4) shall submit to a background investigation, as
16 determined by the board.

17 Sec. 1104.105. DENIAL OF REGISTRATION. (a) The board may
18 deny a registration:

19 (1) to an applicant who fails to satisfy a requirement
20 of this chapter; or

21 (2) on a determination by the board that:

22 (A) there is reasonable evidence that any person
23 who owns more than 10 percent of the appraisal management company or
24 any controlling person of the company has, within the 24 months
25 preceding the date of the application, had a license or
26 certification as an appraiser or a registration as an appraisal
27 management company suspended, revoked, or put on probation in any

1 state;

2 (B) the applicant has, while registered under
3 this chapter, demonstrated incompetency, untrustworthiness, or
4 conduct or practices that render the registrant unfit to perform
5 appraisal management services; or

6 (C) the applicant no longer performs appraisal
7 management services in good faith and is a source of detriment,
8 injury, or loss to the public.

9 (b) The board shall immediately provide written notice to
10 the applicant of the board's denial of a registration under this
11 chapter.

12 (c) An appeal of the denial of a registration is governed by
13 Chapter 2001, Government Code.

14 Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION
15 NUMBER. The board shall:

16 (1) issue a unique registration number to each
17 appraisal management company registered under this chapter; and

18 (2) publish annually a list of the companies
19 registered under this chapter and the registration number of each
20 company.

21 Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed,
22 a registration issued under this chapter expires on the second
23 anniversary of the date the registration is issued.

24 [Sections 1104.108-1104.150 reserved for expansion]

25 SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

26 Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.

27 (a) An-appraisal management company registered under this chapter

1 may not knowingly:

2 (1) employ a person in a position in which the person
3 has the responsibility to order appraisals or to review completed
4 appraisals if the person has had a license or certificate to act as
5 an appraiser denied, revoked, or surrendered in lieu of revocation
6 in any state;

7 (2) enter into any independent contractor arrangement
8 for the provision of appraisals or appraisal management services
9 with any person who has had a license or certificate to act as an
10 appraiser denied, revoked, or surrendered in lieu of revocation in
11 any state; or

12 (3) enter into any contract, agreement, or other
13 business relationship for the provision of appraisals or appraisal
14 management services with any entity that employs, has entered into
15 an independent contract arrangement, or has entered into any
16 contract, agreement, or other business relationship with any person
17 who has ever had a license or certificate to act as an appraiser
18 denied, revoked, or surrendered in lieu of revocation in any state.

19 (b) An appraisal management company is not in violation of
20 Subsection (a) if the person whose license or certification was
21 denied, revoked, or surrendered in lieu of revocation has since
22 that denial, revocation, or surrender had a license or certificate
23 granted or reinstated and the person maintains the license or
24 certificate in good standing.

25 Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION.
26 An appraisal management company registered under this chapter must
27 verify that an individual to whom the company is making an

1 assignment for the completion of an appraisal:

2 (1) is licensed or certified under Chapter 1103; and

3 (2) has not had a license or certificate as an
4 appraiser denied, revoked, or surrendered in lieu of revocation
5 since the last time the company made an assignment for an appraisal
6 to the appraiser.

7 Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
8 appraisal review for an appraisal management company must be
9 licensed or certified under Chapter 1103 with at least the same
10 certification for the property type as the appraiser who completed
11 the report being reviewed.

12 Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an
13 assignment to an appraiser, an appraisal management company must
14 verify that the appraiser receiving the assignment satisfies each
15 provision of the competency rule of the Uniform Standards of
16 Professional Appraisal Practice for the appraisal being assigned.

17 Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal
18 management company registered under this chapter shall on a
19 periodic basis perform an appraisal review of the work of
20 appraisers performing appraisal services for the company to ensure
21 that the services comply with:

22 (1) the edition of the Uniform Standards of
23 Professional Appraisal Practice in effect at the time of the
24 appraisal; or

25 (2) other standards prescribed by board rule.

26 Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal
27 management company registered under this chapter or that has

1 applied for registration under this chapter shall retain for at
2 least five years all business records relating to each service
3 request that the company receives and the appraiser who performs
4 the appraisal for the company.

5 (b) The board may audit the records of an appraisal
6 management company registered under this chapter to ensure
7 compliance with this chapter, board rules, and the Uniform
8 Standards of Professional Appraisal Practice.

9 (c) A written record of all substantive communications
10 between an appraisal management company registered under this
11 chapter and an appraiser relating to inclusion on an appraisal
12 panel or to an appraisal assignment must be maintained as provided
13 under Subsection (a).

14 Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An
15 appraisal management company shall:

16 (1) except in cases of breach of contract or
17 substandard performance of services, pay an appraiser for the
18 completion of an appraisal or valuation assignment not later than
19 the 60th day after the date the appraiser provides the completed
20 appraisal or valuation assignment to the company or its assignee;
21 and

22 (2) compensate appraisers at a rate that is reasonable
23 and customary for appraisals being performed in the market area of
24 the property being appraised consistent with the presumptions under
25 federal law.

26 (b) An appraiser who is aggrieved under this section may
27 file a complaint with the board against the appraisal management

1 company if the matter remains unresolved after the appraiser
2 completes the company's dispute resolution process under Section
3 1104.162.

4 Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a
5 client, an appraisal management company shall separately state the
6 fees:

7 (1) paid to an appraiser for the completion of an
8 appraisal; and

9 (2) charged by the company for appraisal management
10 services.

11 (b) An appraisal management company may not:

12 (1) prohibit an appraiser from recording in the body
13 of the report that is submitted by the appraiser to the company the
14 fee that the appraiser was paid by the company for completing the
15 appraisal; or

16 (2) include any fees for appraisal management services
17 performed by the company in the amount the company reports as
18 charges for the actual completion of an appraisal by an appraiser.

19 Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An
20 appraisal management company registered under this chapter shall
21 disclose the company's registration number on all documents used to
22 procure appraisals in this state.

23 Sec. 1104.160. MANDATORY REPORTING. An appraisal
24 management company that has a reasonable basis to believe an
25 appraiser is failing to comply with the Uniform Standards of
26 Professional Appraisal Practice in a manner that materially affects
27 a value conclusion, violating applicable laws, or otherwise

1 engaging in unethical or unprofessional conduct shall refer the
2 matter to the board in the manner provided by Section 1104.204.

3 Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL.

4 (a) Other than during the first 30 days after the date an appraiser
5 is first added to the appraisal panel of an appraisal management
6 company, a company may not remove an appraiser from its panel, or
7 otherwise refuse to assign requests for appraisal services to an
8 appraiser without:

9 (1) notifying the appraiser in writing of the reasons
10 for removal from the company's panel;

11 (2) if the appraiser is being removed from the panel
12 for illegal conduct, a violation of the Uniform Standards of
13 Professional Appraisal Practice, or a violation of this chapter,
14 notifying the appraiser of the nature of the alleged conduct or
15 violation; and

16 (3) providing an opportunity for the appraiser to
17 respond in writing to the notification.

18 (b) An appraiser who is removed from the appraisal panel of
19 an appraisal management company for alleged illegal conduct, a
20 violation of the Uniform Standards of Professional Appraisal
21 Practice, or a violation of this chapter, may file a complaint with
22 the board for a review of the decision of the company if the matter
23 remains unresolved after the appraiser completes the company's
24 dispute resolution process under Section 1104.162.

25 (c) In a review under Subsection (b), the board may not make
26 any determination regarding the nature of the business relationship
27 between the appraiser and the appraisal management company that is

1 unrelated to the grounds for the removal.

2 (d) The board shall hear and resolve a complaint filed under
3 Subsection (b) not later than the 180th day after the date the
4 complaint is filed with the board.

5 (e) If after opportunity for hearing and review, the board
6 determines that an appraiser did not commit the alleged violation,
7 the board shall order that the appraiser be returned to the
8 appraisal panel of the appraisal management company. The appraisal
9 management company may not refuse to make assignments for appraisal
10 services or otherwise penalize the appraiser after returning the
11 appraiser to the company's appraisal panel.

12 Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management
13 company shall make a dispute resolution process available to review
14 a written request by an appraiser who:

15 (1) is dismissed from the company's appraisal panel
16 for a reason stated in Section 1104.161(a)(2);

17 (2) is not paid as required by Section 1104.157; or

18 (3) alleges a violation by the company of one or more
19 prohibitions in Section 1104.203.

20 [Sections 1104.163-1104.200 reserved for expansion]

21 SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND

22 ADMINISTRATIVE PENALTIES

23 Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board
24 may reprimand an appraisal management company or conditionally or
25 unconditionally suspend or revoke any registration issued under
26 this chapter if the board determines that the appraisal management
27 company has:

1 (1) violated or attempted to violate this chapter or
2 any rule adopted by the board under this chapter; or

3 (2) procured or attempted to procure a license or
4 registration by fraud, misrepresentation, or deceit.

5 (b) The board may probate the suspension or revocation of a
6 registration under reasonable terms determined by the board.

7 Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to
8 any other disciplinary action under this chapter, the board may
9 impose an administrative penalty against a person who violates this
10 chapter or a rule adopted under this chapter.

11 (b) The amount of the administrative penalty may not exceed
12 \$10,000 for each violation. Each day of a continuing violation is a
13 separate violation.

14 (c) The amount of the penalty shall be based on:

15 (1) the seriousness of the violation;

16 (2) the history of previous violations;

17 (3) the amount necessary to deter a future violation;

18 (4) efforts made to correct the violation; and

19 (5) any other matter that justice may require.

20 Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal
21 management company or an employee, director, officer, or agent of
22 an appraisal management company may not:

23 (1) cause or attempt to cause the appraised value of a
24 property assigned under an appraisal to be based on any factor other
25 than the independent judgment of the appraiser;

26 (2) cause or attempt to cause the mischaracterization
27 of the appraised value of a property in conjunction with a consumer

1 credit transaction;

2 (3) seek to influence an appraiser or otherwise to
3 encourage a targeted value in order to facilitate the making or
4 pricing of a consumer credit transaction;

5 (4) alter, modify, or otherwise change a completed
6 appraisal report submitted by an appraiser by:

7 (A) altering or removing the appraiser's
8 signature or seal; or

9 (B) adding information to, removing information
10 from, or changing information contained in the appraisal report,
11 including any disclosure submitted by an appraiser in or with the
12 report;

13 (5) condition the request for an appraisal or the
14 payment of an appraisal fee, salary, or bonus on the opinion,
15 conclusion, or valuation to be reached, or on a preliminary
16 estimate or opinion requested from an appraiser;

17 (6) request that an appraiser provide an estimated,
18 predetermined, or desired valuation in an appraisal report, or
19 provide estimated values or comparable sales at any time before the
20 appraiser's completion of an appraisal;

21 (7) provide to an appraiser an anticipated, estimated,
22 encouraged, or desired value for a subject property or a proposed or
23 target amount to be loaned to the borrower, except that a copy of
24 the sales contract for a purchase transaction may be provided;

25 (8) make any part of the appraiser's fee or the
26 appraisal management company's fee contingent on a favorable
27 outcome, including:

1 (A) a loan closing; or

2 (B) a specific valuation being achieved by the
3 appraiser in the appraisal report;

4 (9) withhold or threaten to withhold timely payment
5 for an appraisal report or appraisal services rendered when the
6 appraisal report or services are provided in accordance with the
7 contract between the parties;

8 (10) withhold or threaten to withhold future business
9 from an appraiser;

10 (11) demote or terminate or threaten to demote or
11 terminate an appraiser;

12 (12) expressly or impliedly promise future business,
13 promotions, or increased compensation for an appraiser;

14 (13) provide to an appraiser, or any person related to
15 the appraiser, stock or other financial or nonfinancial benefits;

16 (14) allow the removal of an appraiser from an
17 appraisal panel, without prior written notice to the appraiser;

18 (15) obtain, use, or pay for a second or subsequent
19 appraisal or order an automated valuation model in connection with
20 a mortgage financing transaction unless:

21 (A) there is a reasonable basis to believe that
22 the initial appraisal was flawed or tainted and that basis is
23 clearly and appropriately noted in the loan file;

24 (B) the subsequent appraisal or automated
25 valuation model is done under a bona fide pre-funding or
26 post-funding appraisal review or quality control process; or

27 (C) the subsequent appraisal or automated

1 valuation model is otherwise required or permitted by federal or
2 state law;

3 (16) prohibit legal and allowable communication
4 between the appraiser and:

5 (A) the lender;

6 (B) a real estate license holder; or

7 (C) any other person from whom the appraiser, in
8 the appraiser's own professional judgment, believes information
9 would be relevant;

10 (17) refuse to accept an appraisal report prepared by
11 more than one appraiser if an appraiser provides substantial
12 assistance to another appraiser in the preparation of the report,
13 unless the appraisal assignment names an individual appraiser or
14 the statement of work requires an unassisted report; or

15 (18) require an appraiser to:

16 (A) prepare an appraisal report if the appraiser,
17 in the appraiser's own professional judgment, believes the
18 appraiser does not have the necessary expertise for the specific
19 geographic area and the appraiser has notified the company of this
20 belief;

21 (B) prepare an appraisal report under a schedule
22 that the appraiser, in the appraiser's own professional judgment,
23 believes does not afford the appraiser the ability to meet all the
24 relevant legal and professional obligations if the appraiser has
25 notified the company of this belief;

26 (C) provide the appraisal management company
27 with the appraiser's digital signature or seal;

1 (D) modify any aspect of an appraisal report
2 without the appraiser's agreement that the modification is
3 appropriate;

4 (E) engage in any act or practice that does not
5 comply with:

6 (i) the Uniform Standards of Professional
7 Appraisal Practice; or

8 (ii) any assignment conditions and
9 certifications required by the client;

10 (F) engage in any other act or practice that
11 impairs or attempts to impair an appraiser's independence,
12 objectivity, or impartiality;

13 (G) enter into an agreement to not serve on the
14 panel of another appraisal management company;

15 (H) indemnify or hold harmless the appraisal
16 management company against liability except liability for errors
17 and omissions by the appraiser; or

18 (I) pay a fee imposed on the appraisal management
19 company under Section 1104.052.

20 (b) Subsection (a) may not be construed to prohibit:

21 (1) an appraiser from reimbursing an appraisal
22 management company for the actual cost of discretionary services
23 provided to the appraiser;

24 (2) an appraiser from voluntarily providing the
25 appraiser's digital signature to another person;

26 (3) an appraisal management company from asking an
27 appraiser, after a report is delivered, to:

1 (A) consider additional appropriate property
2 information, including the consideration of additional comparable
3 properties to make or support an appraisal;

4 (B) provide further detail, substantiation, or
5 explanation for the appraiser's value conclusion; or

6 (C) correct errors in the appraisal report;

7 (4) an appraisal management company from requiring an
8 appraiser to provide advance notice of and an opportunity for the
9 appraisal management company to participate in any legal and
10 allowable communications between the appraiser and a lender; or

11 (5) a copy of an executed contract for a purchase
12 transaction being provided to an appraiser.

13 (c) The board may institute a disciplinary action or impose
14 an administrative penalty under Chapter 1103 against an appraiser
15 who, while acting as an employee, officer, or agent of an appraisal
16 management company, engages in conduct prohibited by Subsection
17 (a).

18 Sec. 1104.204. COMPLAINT. (a) Any person, including a
19 member of the board, may file with the board a written complaint on
20 a form prescribed by the board.

21 (b) The board, on its own motion, may file a complaint
22 against an appraisal management company registered under this
23 chapter.

24 Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of
25 a complaint or on its own motion, the board shall review and
26 investigate an alleged act or omission that the board believes is a
27 ground for disciplinary action.

1 (b) An investigator designated by the presiding officer of
2 the board or commissioner shall investigate each allegation in a
3 complaint to determine whether probable cause exists for a hearing
4 on the complaint.

5 (c) If the board determines that a complaint does not
6 present facts that are grounds for disciplinary action, the board
7 or the commissioner shall dismiss the complaint and may not take
8 further action.

9 Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board
10 may request and, if necessary, compel by subpoena:

11 (1) the attendance of witnesses for examination under
12 oath; and

13 (2) the production of records, documents, and other
14 evidence relevant to the investigation of an alleged violation of
15 this chapter for inspection and copying.

16 (b) The board may also issue a subpoena for purposes of an
17 investigation of a complaint to determine whether the board should
18 institute a contested case proceeding.

19 (c) If a person does not comply with a subpoena, the board,
20 acting through the attorney general, may file suit to enforce the
21 subpoena in a district court in Travis County or in the county in
22 which a hearing conducted by the board may be held.

23 (d) The court shall order compliance with the subpoena if
24 the court finds that good cause exists for the issuance of the
25 subpoena.

26 Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At
27 the conclusion of the investigation of a complaint, the

1 investigator shall submit to the board a written report to enable
2 the board to determine what further action is necessary.

3 (b) The report must contain:

4 (1) statements of fact;

5 (2) the recommendations of the investigator; and

6 (3) the position or defense of the investigated
7 appraisal management company.

8 Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the
9 report submitted under Section 1104.207, the board may:

10 (1) order further investigation of the complaint;

11 (2) determine that there is not probable cause to
12 believe that a violation occurred and dismiss the case; or

13 (3) determine that there is probable cause to believe
14 that a violation occurred and enter into an agreed order with the
15 respondent or proceed as the complainant with a contested case
16 hearing under Chapter 2001, Government Code.

17 (b) The board by rule may delegate any of its authority
18 under Subsection (a) to the commissioner.

19 Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If,
20 after investigating a possible violation and the facts surrounding
21 that possible violation, the board determines that a violation
22 occurred, the board shall give written notice of the violation to
23 the person alleged to have committed the violation.

24 (b) The notice must:

25 (1) include a summary of the alleged violation;

26 (2) state the recommended sanction, including the
27 amount of the proposed administrative penalty; and

1 (3) inform the person of the person's right to a
2 hearing on the occurrence of the violation, the amount of the
3 penalty, or both.

4 (c) Not later than the 20th day after the date the person
5 receives the notice, the person may:

6 (1) accept the board's determination, including the
7 proposed administrative penalty; or

8 (2) make a written request for a hearing on that
9 determination.

10 Sec. 1104.210. PENALTY TO BE PAID OR HEARING REQUESTED. If
11 the person accepts the board's determination or fails to respond to
12 the notice in a timely manner, the board by order shall approve the
13 determination and impose the proposed penalty.

14 Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding
15 officer of the board shall appoint a three-member disciplinary
16 panel consisting of board members to determine whether a person's
17 registration under this chapter should be temporarily suspended.

18 (b) If the disciplinary panel determines from the
19 information presented to the panel that a person registered under
20 this chapter would, by the person's continuation in practice,
21 constitute a continuing threat to the public welfare, the
22 disciplinary panel shall temporarily suspend the person's
23 registration.

24 (c) A registration may be suspended under this section
25 without notice or hearing on the complaint if:

26 (1) institution of proceedings for a contested case
27 hearing is initiated simultaneously with the temporary suspension;

1 and

2 (2) a hearing is held under Chapter 2001, Government
3 Code, and this chapter as soon as possible.

4 (d) A temporary suspension under this section automatically
5 expires after 45 days if the board has not scheduled a hearing to
6 take place within that time or if, at the board's request, the
7 hearing is continued beyond the 45th day.

8 (e) Notwithstanding Chapter 551, Government Code, the
9 disciplinary panel may hold a meeting by telephone conference call
10 if immediate action is required and convening the panel at one
11 location is inconvenient for any member of the panel.

12 Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th
13 day before the hearing date of a contested case involving an
14 appraisal management company, the board shall personally deliver or
15 send by certified mail to the company notice of the hearing.

16 Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
17 LAW. Except as otherwise provided by this chapter, a proceeding
18 under this subchapter is subject to Chapter 2001, Government Code.

19 Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a
20 contested case hearing under this subchapter, the administrative
21 law judge shall:

22 (1) make findings of fact and conclusions of law; and

23 (2) issue to the board a proposal for decision that the
24 board shall take one or more of the following actions:

25 (A) dismiss the charges;

26 (B) revoke the appraisal management company's
27 registration;

1 (C) suspend the registration of the appraisal
2 management company for a period of not more than five years;

3 (D) impose a period of probation, with or without
4 conditions;

5 (E) issue a public or private reprimand or a
6 warning;

7 (F) impose an administrative penalty; or

8 (G) require the payment of costs expended by the
9 board associated with the contested case, including legal fees and
10 administrative costs.

11 Sec. 1104.215. DECISION BY BOARD. (a) Based on the
12 findings of fact and conclusions of law and the recommendations of
13 the hearings examiner, the board by order may determine that:

14 (1) a violation has occurred and may impose an
15 administrative penalty or another sanction; or

16 (2) a violation did not occur.

17 (b) The board shall give notice of the order to the person.
18 The notice must include:

19 (1) separate statements of the findings of fact and
20 conclusions of law;

21 (2) the amount of any penalty imposed or a description
22 of any sanction imposed; and

23 (3) a statement of the right of the person to judicial
24 review of the order.

25 Sec. 1104.216. APPLICATION FOR REHEARING. (a) Not later
26 than the 20th day after the date a final decision is issued in a
27 contested case, a party may file an application with the board for a

1 rehearing. The application must state:

2 (1) the specific grounds for rehearing; and

3 (2) the relief sought.

4 (b) The application is denied if the board does not grant it
5 before the 120th day after the date the commissioner is served with
6 the application.

7 Sec. 1104.217. DECISION ON REHEARING. (a) The decision
8 made at the conclusion of the original contested case hearing may
9 not be reversed or modified for a procedural, evidentiary, or other
10 error that did not cause substantial injustice to the parties.

11 (b) The decision made on a rehearing may incorporate by
12 reference any part of the decision made at the conclusion of the
13 original hearing.

14 (c) On rehearing, the administrative law judge shall
15 consider facts not presented in the original hearing if:

16 (1) the facts arose after the original hearing was
17 concluded;

18 (2) the party offering the evidence could not
19 reasonably have provided the evidence at the original hearing; or

20 (3) the party offering the evidence was misled by a
21 party regarding the necessity for offering the evidence at the
22 original hearing.

23 [Sections 1104.218-1104.250 reserved for expansion]

24 SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS

25 Sec. 1104.251. INJUNCTION. (a) The board may institute an
26 action in its own name against any person, including a person who is
27 not registered under this chapter, to enjoin a violation of this

1 chapter or a rule adopted by the board under this chapter.

2 (b) An action under this section must be brought in a
3 district court in Travis County. The attorney general shall act as
4 legal advisor to the board and provide necessary legal assistance.

5 Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY
6 WITHOUT REQUIRED REGISTRATION. (a) A person who receives
7 consideration for engaging in an activity for which registration is
8 required under this chapter and who is not registered is liable for
9 a civil penalty.

10 (b) The amount of a civil penalty imposed under this section
11 may not be less than the amount of money equal to the value of the
12 consideration received or more than three times the amount of money
13 equal to the value of the consideration received.

14 (c) At the request of the board, the attorney general or a
15 district or county attorney may bring an action in district court to
16 recover a civil penalty under this section.

17 (d) A civil penalty recovered in an action under this
18 section shall be deposited in the state treasury.

19 Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY
20 WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if
21 the person engages in an activity for which registration is
22 required under this chapter without being registered.

23 (b) An offense under this section is a Class A misdemeanor.

24 SECTION 3. Not later than January 31, 2013, the governor
25 shall appoint the members of the advisory committee established
26 under Section 1103.157, Occupations Code, as added by this Act.

27 SECTION 4. Not later than January 1, 2012, the Texas

1 Appraiser Licensing and Certification Board shall adopt all rules,
2 fees, and forms as required by Chapter 1104, Occupations Code, as
3 added by this Act.

4 SECTION 5. (a) The Real Estate Center at Texas A&M
5 University shall conduct a study of the reasonable and customary
6 rates of compensation for appraisals performed by appraisers in
7 various market areas of this state.

8 (b) Not later than November 1, 2012, the Real Estate Center
9 at Texas A&M University shall submit to the appropriate standing
10 committees of the legislature a report containing the findings of
11 the study conducted under Subsection (a) of this section.

12 SECTION 6. Notwithstanding Section 7(b) of this Act, an
13 appraisal management company conducting business in this state on
14 or before the effective date of this Act may continue to conduct
15 business in this state without registering under Chapter 1104,
16 Occupations Code, as added by this Act, until the 120th day after
17 the date the registration process created by the Texas Appraiser
18 Licensing and Certification Board under Chapter 1104, Occupations
19 Code, as added by this Act, takes effect if that process is not in
20 effect on March 1, 2012.

21 SECTION 7. (a) Except as provided by Subsection (b) of
22 this section, this Act takes effect September 1, 2011.

23 (b) Section 1104.101 and Subchapters E and F, Chapter 1104,
24 Occupations Code, as added by this Act, take effect March 1, 2012.

H.B. No. 1146

David Newkirk

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 1146 was passed by the House on April 27, 2011, by the following vote: Yeas 124, Nays 17, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1146 on May 18, 2011, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Robert Honey

Chief Clerk of the House

I certify that H.B. No. 1146 was passed by the Senate, with amendments, on May 16, 2011, by the following vote: Yeas 27, Nays 4.

Aatsy Saw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

RICK PERRY

Governor.

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 PM 'CLOCK

JUN 17 2011

Boyd R. Davis

Secretary of State